

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DONALD HESS and ELIZABETH PADILLA,
individually and on behalf of all others similarly situated,

Case No: 21-cv-4099 (AT)

[Proposed] Amended Civil Case
Management Plan and
Scheduling Order

Plaintiffs,

-against-

BED BATH & BEYOND INC,

Defendant.
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1. On or before November 19, 2021, the Defendant shall respond, in writing, to Plaintiffs deficiencies letters dated September 30, 2021 and October 20, 2021 advising which items remain in dispute and are therefore the proper subject of a 37.3 conference between counsel.
2. **Meet and Confer.** The attorneys for the respective parties shall meet and confer via telephone on or before November 24, 2021 and will be prepared to address all outstanding discovery disputes *other than ESI* at that conference in an attempt to narrow the discovery issues in dispute.
3. **Amended Responses.** To the extent that, following the 37.3 conference, Defendant desires to amend its discovery responses, it shall serve amended discovery responses on or before December 8, 2021.
4. **ESI Protocol.** The attorneys for the respective parties shall also meet and confer via telephone on or before November 19, 2021 and will be prepared to discuss all of the topics addressed in the Court's proposed ESI Protocol at that conference. The parties shall have a protocol for electronic discovery in place by November 22, 2021.

- 5. Fact Discovery.** All fact discovery shall be completed by March 31, 2022.
- 6. Depositions.** Party Depositions shall be completed by January 31, 2022.
7. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York.
- 8. Expert Discovery.**
 - a. The parties anticipate using experts.
 - b. Plaintiffs anticipate the need for the following experts¹:
 - i. Vocational experts to testify regarding the nature and extent of the manual work performed by the Plaintiffs and others similarly situated;
 - ii. Worker's compensation experts to testify regarding the significance, if any, of the workers' compensation classifications of the Plaintiffs and those similarly situated.
 - iii. Economic Experts to testify regarding whether damages can be established with certainty based upon the payroll ESI furnished by the Defendants, and the nature and extent of such damages.
 - c. By February 15, 2022, the parties shall meet and confer on a schedule for expert disclosures, including reports, production of underlying documents, and depositions, provided that (i) expert report(s) of the party with the burden of proof shall be due before those of the opposing party's expert(s); and (ii) all expert discovery shall be completed by April 29, 2022.
- 9. Summary Judgment Motions:** No less than 30 days before a party intends to file a summary judgment motion, and in no event later than the close of all discovery, the

¹ This is not meant to be an exhaustive list, and additional expert witnesses may be necessary depending upon information obtained in the course of fact discovery.

party shall notify this Court, and the District Judge, that it intends to move for summary judgment and, if required by the District Judge's Individual Practices, request a pre-motion conference.

10. Pretrial Submissions: The parties shall submit a joint proposed pretrial order and any required accompanying submissions 30 days after decision on the summary judgment motion(s), or, if no summary judgment motion is made, 30 days after the close of all discovery.

11. Status Conference: A status conference will be held before the undersigned on _____ at _____.m. in Courtroom 18D, 500 Pearl Street. The parties shall submit a joint status letter by _____ no longer than _____ pages.

DATED:

SO ORDERED:

ROBERT W. LEHRBURGER
United States Magistrate Judge